IN THE HIGH COURT OF JUDICATURE, ANDHRA PRADESH
AT HYDERABAD

(Special Original Jurisdiction)

WEDNESDAY, THE TWENTY SECOND DAY OF SEPTEMBER
TWO THOUSAND AND FOUR

PRESENT

THE HON'BLE MR JUSTICE V.V.S.RAO

WRIT PETITION NO : 23543 of 2003

Between:

Gundepuri Venkaiah S/o.Latchaiah
R/o. Penpahad Village and Mandal, Nalgonda District

..... PETITIONER

AND

1 Basanagarra Venkanna, S/o. Yellaiah,
R/o. Penpahad Village and Mandal, Nalgonda District
2 Election Officer, Stage-II, Gram Panchayat Elections-2001, Penpahad,

Nalgonda District, Mr.G.Narasimha Chary
3 District Election Authority (District Collector), Nalgonda.

4 Deputy District Election Authority (R.D.O.), Suryapet, Nalgonda Dist.
5 Assistant District Election Authority (M.P.D.O.), Penpahad, Nalgonda

District
6 Additional District Election Authority (M.R.O.), Penpahad, Nalgonda

District.
7 The State Election Commissioner of A.P., Buddha Bhavan, Tank Bund,

Secunderabad, rep. by its Commissioner.

.....RESPONDENTS

Petition under Article 226 of the constitution of India praying that in the circumstances stated in the Affidavit filed herein the High Court may be pleased to issue a writ, order or direction more in the nature of Writ of Certiorari calling for the records relating to the order dt. 31st October, 2003 in O.P.No. 8 of 2001 on the file of the Hon'ble Election Tribunal-cum-Junior Civil Judge, Suryapet, Nalgonda District and quash the same by holding it as illegal, bad, arbitrary to the evidence on record.

Counsel for the Petitioner: MR.J.R.MANOHAR RAO

Counsel for the Respondent 1: Mr. J.ASHVINI KUMAR

Counsel for Respondents 2 to 7: Mr.V.V.Prabhakar Rao, Standing Counsel for Election Commission

The Court made the following :

THE HON'BLE SRI JUSTICE V.V.S.RAO

WRIT PETITION NO.23543 OF 2003

ORDER:

In the elections held on 14.08.2001, petitioner herein was elected Sarpanch of Penpahad village in Nalgonda District. The petitioner secured 679 votes as against the first respondent, who secured 678 votes. The first respondent filed O.P.No.8 of 2001 on the file of the Election Tribunal-cum-Junior Civil Judge, Suryapet (hereafter called, the Tribunal) challenging the election of the petitioner on the ground that the election is vitiated by grave material irregularities. The petitioner herein opposed the election petition. The first respondent examined himself as P.W.1 besides examining two other witnesses – P.W.2 and P.W.3. He also marked Exs.P.1 to P.4. The petitioner examined himself as R.W.1 besides examining R.Ws.2 to 4 but did not mark any documents. The learned Tribunal marked Exs.C.1 to C.10. On consideration of evidence on record, the learned Tribunal recorded a finding that the account of votes polled mentioned in Form 16 is not tallying with the account of votes counted in Form 17, that four votes were misplaced and that there is material irregularity, which affects the result of elected candidate. The Tribunal also rejected the contention of the petitioner that the first respondent did not file any written representation raising objections. A categorical finding is recorded by the Tribunal that in Ex.P.2, the first respondent raised objections regarding discrepancy in Form 16 and Form 17. Ultimately, the Tribunal set aside the election of the petitioner and ordered to hold fresh elections to the Office of Sarpanch. The order of the Election Tribunal is challenged in the present Writ Petition.

This Court while admitting the writ petition on 10.11.2003, by order made in W.P.M.P.No.29579 of 2003 suspended the impugned order of the learned Tribunal. The first respondent in the writ petition moved this Court by filing W.V.M.P.No.2023 of 2004 seeking to vacate the interim order dated 10.11.2003. Initially the matter was listed on 31.08.2004, as the learned counsel for the writ petitioner was absent, this Court directed the matters to be listed on 07.09.2004 under the caption 'for dismissal'. When the matter was called in the forenoon on 07.09.2004, the learned counsel for the writ petitioner is absent but the junior counsel Sri Shankar Bandari sought adjournment, which was refused. The matter was again called in the afternoon. This Court heard the learned counsel for the writ petitioner, first

respondent and learned Assistant Government Pleader for Panchayat Raj.

The learned counsel for the petitioner submits that the first respondent has not raised any objection at the time of declaration of results, that though the learned Tribunal ordered for production of election material, the order was set aside by this Court and that the Tribunal committed error in holding that the election is vitiated by material irregularity. **Per Contra**, the learned counsel for the first respondent submits that the first respondent filed objections raising material irregularities committed by second respondent in counting the votes and when the same was not accepted, the first respondent filed a representation dated 16.08.2001 before the third respondent. He also submits that there is ample evidence on record to show that the votes accounted for and votes polled are not tallying. Therefore, the learned Tribunal was correct in holding that the second respondent committed material irregularity. He would urge that in the absence of details regarding four missing votes in Form 16, which is mandatory, an inference has to be drawn that the second respondent has committed material irregularity.

The point that arises for consideration is whether the impugned order of the learned Tribunal suffers from any error apparent on the face of record.

Before taking up point for consideration it is necessary to mention settled principles of law regarding review of Tribunal's decision. It is now well settled that in exercising the power of judicial review, especially the Certiorari jurisdiction of this Court, unless and until the order of the statutory Tribunal suffers from grave error apparent on the face of record, the Court cannot interfere with the order, even in a situation where a second opinion on facts is possible. Further every error of the Tribunal in coming to a conclusion is not and cannot be construed as a grave error apparent on the face of record.

A.P.Panchayat Raj (Election Tribunals in Respect of Gram Panchayats, Mandal Parishads and Zilla Parishads) Rules, 1995 (hereafter called, the Rules) govern the election petitions and exercise of power by the Election Tribunals constituted thereunder. Rule 12 of the Rules empowers to declare the election of the returned candidate as void on any of the grounds mentioned therein, *inter alia,* that the result of the election, insofar as it concerns a returned candidate has been materially affected by the non-compliance of the provisions of the Act or any Rules or orders made thereunder. Under Rule 15 of the Rules, it is competent for Election Tribunal to declare the election of the returned candidate as void and further direct a fresh election or declare any other candidate with majority of valid votes as duly elected. While considering the question whether result of the returned candidate has been materially affected by non-compliance with the provisions of the Act or the Rules, the Election Tribunal has to consider the effect of the relevant Rules in A.P.Panchayat Raj (Conduct of Elections) Rules, 1994 (hereafter called, the Election Rules).

As per Election Rules, after closing of poll, the Polling Officer shall in the presence of any candidate make separate packets of tendered ballot papers, unused ballot papers, spoilt and returned ballot papers, marked copy of the Electoral

Roll and tendered voters list etc. As per Rule 31 of the Election Rules, such packet shall be accompanied by a statement in a separate cover in Form 16 made by the Polling Officer showing the number of ballot papers in the ballot boxes and unused, spoilt, returned and tendered ballot papers. At the time of counting, under sub rule (7) of Rule 34 of the Election Rules, after counting of all ballot papers contained in all the ballot boxes, the Election Officer shall make the entries in a result sheet in Form 17 and announce the particulars. After the announcement is made under Rule 34(7) of the Election Rules, a candidate may apply in writing to the Election Officer for recounting of the votes. The number of ballot papers in the ballot boxes and the total number of tendered votes in Form 17 must tally, as otherwise it would be contravention of law leading to suspicion that the election is not fair. These principles have to be kept in mind while considering the rival contentions in this case.

Ex.P.2 is a representation dated 16.08.2001 given by the first respondent to the Revenue Divisional Officer, Suryapet, fourth respondent herein and Ex.P.1 dated 08.09.2001, which is a letter of the State Election Commission, seventh respondent herein, by which the petitioner was advised to approach the Election Tribunal. Therefore, the submission of the learned counsel for the petitioner that there was no contemporaneous document to show that the first respondent raised any objection, is misconceived. Further, Rule 12 of the Rules, as such does not require any defeated candidate to raise objections regarding material irregularity and then seek invalidation of the election from the Election Tribunal. Indeed, there is nothing in Section 233 of the A.P.Panchayat Raj Act, 1994 as well as Rules 12,13 and 15 of the Rules, which requires a person to raise objections before filing election petition before the competent Election Tribunal. It is no doubt true that wherever the petitioner seeks recounting of votes, the Courts have insisted that there should be contemporaneous document to show that such person raised objections regarding discrepancies and irregularities in counting. Indeed as already mentioned under Rule 35 of the Election Rules, a person has to make a representation in writing for recounting and in the absence of such request in writing, the law does not permit the person to seek recounting of the votes because the secrecy of ballot has to be maintained at all costs. The said principle has no application when the person approaches the Election Tribunal seeking a declaration that the material irregularity alleged has affected the result of the returned candidate.

Form 16 was not produced before the learned Election Tribunal. Therefore, by order dated 26.09.2003, R.W.3 (Stage II Officer) and R.W.4 were recalled for marking Form 16 and giving liberty to cross-examine the said witnesses by both the sides. The Tribunal by the said order also directed the fifth respondent to produce Form 16. Against the said order in I.A.No.439 of 2001, petitioner herein filed C.R.P.No.5901 of 2001. This Court disposed of the said petition directing the learned Tribunal to pass appropriate orders after affording an opportunity to both sides. Subsequently, the Tribunal did not pass any orders. However, there was ample evidence before the Tribunal to come to the conclusion that the votes polled and votes counted were not tallying. Dealing with this aspect, the Tribunal observed:

It cannot be denied that the account of votes shown by RW-3 in Form No.17 should tally with the account of votes mentioned in Form No.16. RW-3 admitted that each voter is given two votes, one for ward member and another for Sarpanch. He has also admitted that at each ballot box one clerk was placed who would observe whether each voter put the vote in the ballot box or not. He has also admitted that he has not received any complaint about the non-insertion of votes to Sarpanch in the ballot box. In other words, RW-3 admitted that every voter put the ballot paper in the ballot box for the ward member and for Sarpanch. The fact that for ward members the account of total votes at the time of counting shown by RW-3 being 1454 inclusive of one postal ballot is not in dispute. It is the common knowledge that RW-3 was to show the account of votes for 1454 even for the post of Sarpanch. If there is any discrepancy he has to mention the same in Part-II of Form No.16. RW-3 admitted that as per Exs/C-1 to C-10 he was to prepare Form No.17 and declare the election. He has also admitted that details shown in Form No.17 are not tallying with details mentioned in Exs.C-1 to C-10. This admission on the part of RW-3, which is reflected by documentary evidence itself, is sufficient to hold that RW-3 misplaced four votes, which is a material irregularity.

R.W.3 is Stage II Election Officer. He is required to mention the discrepancy in Form 16 as per Rule 32 of Election Rules. He admitted in his evidence that as per Exs.C.1 to C.10, which are ward wise particulars mentioned in Form 16, the total number of votes polled for the Office of Sarpanch are 1454 but R.W.3 did not fill up part II of Exs.C.1 to C.10 and kept them blank. This is a gross violation of Conduct of Election Rules, which would materially affect the result of the petitioner, who got elected by margin of one vote. Therefore, it must be held that the impugned order does not suffer from any error apparent on the face of record requiring exercise of Certiorari jurisdiction by this Court.

The writ petition is devoid of merit and is accordingly dismissed.

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(V.V.S.RAO,J)

22.09.2004.

pln

To

1. Mr.G.Narasimha Chary, The Election Officer, Stage-II, Gram Panchayat Elections-2001, Penpahad, Nalgonda district.
2. The District Election Authority, District Collector, Nalgonda.
3. The Deputy District Election Authority, Revenue Divisional Officer, Suryapet, Nalgonda Dist.
4. The Assistant District Election Authority, Mandal Parishad Development Officer, Penpahad, Nalgonda District.
5. The Additional District Election Authority, Mandal Revenue Officer, Penpahad, Nalgonda District.

6. The Commissioner, State Election Commission of A.P., Budha Bhavan, Tank Bund, Secunderabad.

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